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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-196

THE STATE OF TENNESSEE, EX REL.,
CONGER, ET AL.,
Petitioners,

vs.

MADISON COUNTY, TENNESSEE, ET AL.,
Respondents.

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

I.

PRELIMINARY STATEMENT

Since the petitioners, in their petition for Writ of Certiorari, have set out references to the opinion below, have made a statement of the grounds on which jurisdiction of this Court is invoked, and the questions presented for review, the respondents will not burden the record by repeating the same. However, since respondents challenge the validity of the Question Presented, and the completeness of the Statement of Facts, they will touch upon same in keeping with the position taken in this reply brief.

Jurisdiction

While the respondents acknowledge that the petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C.S., Section 1257(3), they respectfully submit, that as their brief will clearly indicate, this Court does not have jurisdiction of this case and the issues presented.

Question Presented

Petitioners have so framed this section of their petition as to indicate to this Court that there is a federal question in this litigation, and that it was utilized as a basis for initiating this action against the respondents. Petitioners omitted filing as an appendix to their petition a copy of their complaint, which initiated this action in the Circuit Court of Madison County, Tennessee, and perhaps for good reason. A detailed examination of petitioners' complaint, which appears as Appendix A, clearly indicates that at no place in the complaint was a federal statutory or constitutional issue raised. To the contrary, the only statutory question presented was the interpretation and application of a singular Tennessee code section, namely, Section 49-605, T.C.A.

The crux of the petitioners' complaint against respondents Madison County and its officials is set forth in paragraphs 7 and 8 therein, appearing in Appendix A, page A-5. These basic allegations are that for two fiscal years, revenue sharing funds allocated to Madison County, Tennessee were appropriated as a part of that county's budget to the school fund, and in neither case were these funds shared with the City of Jackson, which operates a school district within Madison County, as the city alleged should have been done, pursuant to Section 49-605, T.C.A. By way of relief, the petitioners asked for an injunction,

mandating that Madison County should allocate these revenue sharing funds in accordance with *Section 49-605, T.C.A.* (emphasis supplied).

The Circuit Court of Madison County, Tennessee entered judgment for petitioners, decreeing that apportionment of federal revenue sharing funds was mandated by the provisions of Section 49-605, T.C.A. The involvement or recognition of any federal statute of any type was as totally absent from the judgment of the trial court, as it was from the pleadings in the trial court. See Appendix B, pages A-11-A-15.

Respondents herein perfected their appeal to the Tennessee Court of Appeals, wherein a singular assignment of error was filed, to the effect that the trial court had misconstrued and misapplied Section 49-605, T.C.A. Within hours after hearing argument, the Court of Appeals handed down its opinion, reversing the trial court, holding that Section 49-605, T.C.A. had no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended. The opinion of the Court of Appeals appears as Appendix B, page 41, et seq., petitioners' brief. It should be noted that in that opinion no reference was made to any federal statute or regulation, nor is the application or interpretation of any federal statute made the rationale for the decision of that court.

As the petition in this cause reflects, petitioners then sought to have that judgment of the Court of Appeals reviewed by the Tennessee Supreme Court, by means of certiorari. Appellate review by certiorari in Tennessee is somewhat similar to that in the federal system, in that it is a privilege rather than a right, but the statutory jurisdiction is somewhat broader than in the federal system.

Rule 12, Tennessee Supreme Court Rules, requires that:

> "The petition (for certiorari) shall state the substance of the case so as to show a prima facie error or errors in the judgment or decree of the intermediate court and how petitioner is prejudiced thereby."

Likewise, Rule 14 of the Tennessee Supreme Court states in part that:

> "Assignment of Errors. The assignment of errors shall contain in the order herein stated:
>
> (2) Errors specified, how. A statement of the errors of fact or law relied upon to reverse or modify the same, showing specifically wherein the action complained of is erroneous, and how it prejudiced the rights of the appellant, or plaintiff in error, and references to the pages of the record where the ruling of the court on matters constituting errors of law appears . . ."

Again it is noted that as revealed in the Court of Appeals opinion, Appendix B, petitioners' brief, page 41, et seq., there was no reference in the decision to any federal statute. Therefore, the assignment of error to the Tennessee Supreme Court relied upon as stating a federal question is not in keeping with the rules of that court.

Now that petitioners are in the federal system, they state on page 4 of their brief that the question thereby presented is:

> "Whether or not the decision of the Supreme Court of Tennessee interpreting Section 49-605, T.C.A., has caused such state statute to become in violation of the provisions of Title 31, Section 1243(4)1, U.S.C.A. . . ."

However, when in the state system, in both the Tennessee Court of Appeals and the Tennessee Supreme Court, by means of identical language, as may be seen on page A-36 of petitioners' Petition for Certiorari, Appendix C, the petitioners presented the issue thusly:

> "Based on the above facts, the question very simply is—does Section 49-605 Tennessee Code Annotated require that all funds appropriated by the county court to the county school system for current operation and maintenance, including funds derived from the county from federal revenue sharing funds granted to the county be apportioned . . . between the county school system and . . . the Jackson city school system."

II.

STATEMENT OF THE CASE

Except for some editorializing by petitioners as to the effects of the action of respondents, such as would give the appearance that the action of the respondents was somewhat contrived and sinister, the basic facts are not in dispute and are correctly stated.

Up until the latter part of the fiscal year 1976-1977, the only revenues Madison County, Tennessee had received and thus appropriated for school operation and maintenance purposes with the City of Jackson were those revenues as classified by Section 49-605, T.C.A. Furthermore, since the latter half of that fiscal year, up until the present time, Madison County has declined to apportion with the City of Jackson that portion of the school funds derived under federal revenue sharing. There is nothing sinister or deliberate about this action. Under the Federal Revenue Sharing Act, technically called the State and Local Fiscal Assistance Act of 1972, education

was not an enumerated, permitted use until the section governing uses was repealed on October 3, 1976, by Congress. Only then were counties and cities free to use federal revenue sharing funds for educational purposes.

Since fiscal 1976-77, the City of Jackson has used its entire allocation of federal revenue sharing funds for education.

While the petitioners talk in terms of "losses" to the cities, by the same token the record reflects that the unapportioned use of federal revenue sharing funds, aside from being statutorily valid, is not only the last vestige of hope for counties to improve their educational position in Tennessee, but it is also the only fair and equitable approach, as noted by the Tennessee Supreme Court at page 639 of its opinion.[1] The petitioner City of Jackson is attempting to have declared null and void the action of the respondent Madison County, Tennessee to use its revenue sharing funds in its school fund without apportionment with the city. The petitioners have neglected to advise the Court that in using its full appropriation of federal revenue sharing funds in its own school fund without apportioning same with the county, that under the Federal Revenue Sharing Act it has improved its "tax effort", and thus will be able in the years to come to take a larger bite of federal revenue sharing funds allocated to county areas before the division between the cities located therein and their respective counties.

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1. *See State of Tenn., ex rel., Conger, et al. v. Madison County, Tenn., et al.*, 581 S.W.2d 632.

III.

JURISDICTIONAL STATEMENT

This Court does not have jurisdiction over this case, for the reasons that the issues presented and decided in the state court do not place this case within the purview of 28 U.S.C.S., Section 1257(3).

IV.

REASONS FOR DENYING THE WRIT

A. General. The Petitioners Have Not Met Any of the Requirements So As to Properly Invoke the Provisions of 28 U.S.C.S. 1257(3).

Petitioners claim that a "federal question" is presented by this case, and that question is not that the decision of the Tennessee Supreme Court interpreting a state statute was violative of a federal statute, but is purely a rhetorical one, *whether or not* (emphasis supplied) the decision of the Supreme Court of Tennessee, interpreting Section 49-605 Tennessee Code Annotated has caused such state statute to become in violation of 31 U.S.C.S., Section 1243 (4)1. The primary thrust in the petition is that this decision of the Tennessee Supreme Court gives federal revenue sharing funds a special protection contrary to the provisions of the federal revenue sharing law, cited above, the thrust of which is that local governments "will provide for the expenditure of amounts received under subchapter 1 of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue . . ."

Respondents contend on the other hand that up until the present time petitioners have insisted that the only issue was whether or not Section 49-605, T.C.A. required

federal revenue sharing funds to be allocated to local school districts as were other local revenues, and that both the Court of Appeals and the Supreme Court have simply applied accepted principles of statutory construction, holding that under Section 49-605, T.C.A., federal revenue sharing funds are not revenues derived from states or subdivisions thereof, and hence are not subject to being apportioned under that particular code section. The respondents and the courts of Tennessee have done nothing in contravention or contradiction of the Federal Revenue Sharing Act, but have on the other hand, to the contrary, followed the act, for the Tennessee Supreme Court, which is charged with the interpretation of state statutes, has interpreted, as has the Court of Appeals, that federal revenue sharing funds are not local funds within the meaning of this act. As will be shown later, as was done in Section 5-924, T.C.A., the Legislature can add the classification "federal funds", and this would change the color of the picture entirely, and federal revenue sharing funds would then be subject to the provisions of 49-605.

The general rule as to what must appear in order to justify this Court taking jurisdiction to review a decision of a state appellate court were first laid down in the case of *Crowell v. Randall,* (1836) 10 U.S. 368, 9 L.ed. 458. This decision of course was handed down many many years prior to the codification of 28 U.S.C.S. 1257(3).

That Court stated that it must appear upon the face of the record (1) that some one of the questions stated in that section (of the federal statute involved) did arise in the state court; (2) that the question was decided by the state court; (3) that it was not necessary that the question should appear on the record to have been raised, but that it must appear that it was raised and must have been decided in order to have induced the judgment of the

state court; and (4) that it is not sufficient to show that a question might have arisen or been applicable to the case, unless the record further shows that it did arise and was applied by the state court to the case.

B. No "Federal Question" Was Presented to the State Court for Consideration.

A preliminary step in showing that the state court's decision turned on a federal question, and one which this Court has uniformly recognized as essential, is to show that such a question actually arose in the case. Among the numerous cases supporting this proposition are *Honeyman v. Hanan,* (1936) 300 U.S. 14, 81 L.ed. 476, 57 Sup.Ct. 350 and *Southwestern Bell Telegraph Company v. Oklahoma,* (1938) 303 U.S. 206, 82 L.ed. 751, 58 Sup.Ct. 528.

It must be shown that there was something in the case before the state court which at least would call that court's attention to the federal question as one that was relied upon by the party. *Keokuk & H. Bridge Co. v. Illinois,* (1900) 175 U.S. 626, 44 L.ed. 299, 20 Sup.Ct. 205.

In the present petition petitioners rely heavily upon what they have identified as their seventh Assignment of Error in the Petition for Certiorari from the Tennessee Court of Appeals to the Tennessee Supreme Court as identifying their "federal question." But this is not enough. Respondents point out that this not only fails to comply with the rules of the Tennessee Supreme Court regarding appellate practice and procedure, but it also fails to measure up to the standards prescribed by this Court in past decisions. Nowhere in petitioners' original complaint, by which this action was first brought, is there any mention of any federal statute or right. The thrust of their complaint is that respondent Madison County, Tennessee, had failed to do certain fiscal acts, as required to be done by state stat-

ute. See petitioners' complaint, Appendix A, page A-5. The judgment of the trial court, the only one adverse to the respondents, made no mention of any federal statute or right, but turned solely and alone on the construction and application of Section 49-605, T.C.A. See Appendix B, trial court judgment, page A-14. The decision of the Court of Appeals, Western Section, State of Tennessee, found as Appendix B, petitioners' brief, pages 41 et seq., was based solely and alone upon its construction and application of Section 49-605, T.C.A. The singular issue framed in the Petition for Certiorari, in the body of the argument, by petitioners was the interpretation and application of 49-605, T.C.A. See Appendix C herein, petitioners' petition for certiorari, page A-36.

In the case of *Edwards v. Elliott,* (1874) 21 U.S. 532, 22 L.ed. 487, it was therein held that it was not enough to give jurisdiction to the United States Supreme Court that it should appear that in the assignment of errors in the state appellate court that a complaint was made that the trial court improperly decided that the lien law of the state was valid and constitutional, where it was not alleged in the trial court that the law was repugnant in any particular provision of the Constitution of the United States. In the later case of *Cox v. Texas,* (1906) 202 U.S. 446, 50 L.ed. 1099, 26 Sup.Ct. 671, it was held that a federal question, although referred to in the assignment of error in the state appellate court and in the Supreme Court of the United States, could not be considered by the latter court where it did not appear that the state court dealt with the question and it might have refused to do so on the ground that it was not raised in the trial court.

The above authorities have inherent within them a basic assumption which respondents state is not present in this case and thus make them even stronger authority.

That basic assumption is that in the above authorities there in fact was a federal question, but it was not properly presented. It is respondents' position that not only was no federal question properly presented, but there was no federal question in existence in the first place.

C. No "Federal Question" Was Passed Upon by the State Court, nor Was a Decision Upon a "Federal Question" Determinative of the Principal Issue.

There is a second requirement that petitioners have not met, that is co-extensive with the first one discussed in B. above and that is, a showing by the petitioners that the state court actually passed upon and decided a federal question of the character mentioned in 28 U.S.C.S. 1257(3). *See Honeyman v. Hanan, supra; Southwestern Bell Telegraph Company v. Oklahoma, supra.*

In the case of *Commercial Bank v. Rochester,* (1873) 15 U.S. 639, 21 L.Ed. 117, the Supreme Court said:

> "It has been so often held by this court that the question on which the plaintiff in error relies to give it jurisdiction must appear to have been decided by the state court, that it has become one of the settled principles on that subject."

As the record clearly indicates, the "principal issue" in this case is whether or not under a Tennessee statute, namely, Section 49-605, T.C.A., funds received by counties known as federal revenue sharing funds must be apportioned, when allocated by the county to its school budget, with any other independent school district within the county. In order to invoke jurisdiction under 28 U.S.C.S. 1257(3), in addition to the two requirements that have already been considered, there is another, and that is a showing that the decision of the federal question by the

State Appellate Court was necessary to a determination of the case. It must therefore appear from the record, either affirmatively or by a fair implication, that the decision of the federal question was necessary to decide the lawsuit. *See Honeyman v. Hanan, supra; Southwestern Bell Telegraph v. Oklahoma, supra. See also Herb v. Pitcairn,* (1945) 324 U.S. 117, 89 L.ed. 789, 65 Sup.Ct. 459.

Thus where the record shows that the judgment of the state court was properly based upon a ground which did not involve a federal question, it is a matter of no consequence as far as the jurisdiction of the United States Supreme Court is concerned that it appears that the state appellate court went further and decided a federal question, since a decision of such question was not necessarily involved in the determination of the cause. *Moore v. Mississippi,* (1875) 21 U.S. 636, 22 L.ed. 653.

A mere discussion of a federal question in the opinion of a state appellate court is insufficient to give the U.S. Supreme Court jurisdiction to review it, since the Supreme Court reviews the judgments of state courts and not statements and opinions. *See Black v. Cutter Laboratories,* (1956) 351 U.S. 292, 100 L.ed. 1188, 76 Sup.Ct. 824.

The authorities referred to above are even stronger when applied to the case under consideration, for in each of them there was a federal question and a federal question duly raised but the case was decided on a non-federal question grounds.

The opinion of the Tennessee Supreme Court in plain and simple language shows that its rationale did not turn on any "federal question." See Petitioner's Brief, Appendix C.

D. The State Court Decision Was Based Upon State Grounds, Which Were Totally Adequate and Supportive of That Decision.

An examination of this record clearly reveals that the decision of the Tennessee Supreme Court in this case was based purely and alone upon state grounds, and that these state grounds were totally adequate to support the decision. First of all, after reviewing several state statutes and state court decisions, the Tennessee Supreme Court, at page 638, held that federal revenue sharing funds may be allocated for school purposes.

They next considered the application and implication of the case of *City of Harriman v. Roane County*, 553 S.W. 2d 904 (1977), which petitioners have continuously insisted dictated the outcome of this case, and that the case should be decided in their favor. Both Appellate Courts have disagreed with petitioners with the very court that authored *Harriman* stating:

> "We, therefore, hold that federal revenue sharing funds may be allocated for school purposes. Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion." Page 638.

Lastly, on the question of apportionment, the Tennessee Supreme Court examined the Tennessee statute, Section 49-605, T.C.A. and stated at page 639:

> "By its very phraseology this statute cannot be applicable to federal revenue sharing funds, the source of which is the federal government. Money received from the federal government obviously is not received from a state, county, or other political subdivision (as provided by the statute)."

A corollary to the rule argued in Section C above, to the effect that a review by this Court of a state appellate

court decision requires a showing that there was a decision on a federal question which was necessary to that court's determination, is the additional rule that there can be no review by this Court if the judgment of the state appellate court, although it might embody a ruling on a federal question, finds support in adequate state grounds, apart from any federal question. *Holley v. Lawrence*, (1943) 317 U.S. 518, 87 L.Ed. 434, 63 Sup.Ct. 394; *Herb v. Pitcairn, supra; Black v. Cutter Laboratories, supra.*

E. The Tennessee Supreme Court Decision of *City of Harriman v. Roane County*, Is Readily Distinguishable, and Does Not Support Petitioners' Case.

Petitioners in support of their petition for certiorari cite *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977), as establishing proper guidelines for the appropriating of Federal Revenue Sharing Funds. However, the opinion of the Tennessee Supreme Court negates this proposition. In discussing this recent opinion in the case now under consideration, that court notes that *City of Harriman* was dealing with conventional State and County revenues, governed by state statutory and decisional law with which we are not here dealing, and, therefore, *City of Harriman* would certainly not be applicable. The Supreme Court of Tennessee in its opinion did establish—and properly so—what the State laws and procedures applicable to the expenditure of its own revenues are, as well as what they are not. This is in no way contradictory to the requirements of 31 U.S.C.S. 1243(a)(4).

> "Nothing in our recent case of *City of Harriman v. Roane County*, 553 S.W.2d 904 (1977) alters this conclusion. In that case we were dealing with conventional county revenues, expenditure of which is governed by state statutory and decisional law. We held

that the proceeds of the wholesale beer tax could not lawfully be appropriated to school purposes 'without specific statutory authorization,' 553 S.W.2d at 907, and that although the second half of the retail sales tax proceeds could be so used, they must be apportioned in accordance with Sec. 49-605 T.C.A.

(4) "Again, in the instant case we do not deal with conventional state or county revenues, but with funds that come to local governments with the restriction that they will be expended 'in accordance with the laws and procedures applicable to the expenditure of its own revenues.' 31 U.S.C. Sec. 1243(a)(4). There is no Tennessee law that precludes the use of these funds for any legitimate county purpose."

F. "Federal Funds" Do Not Categorically Become "County Funds", As Alleged by Petitioners.

Petitioners categorically state that the General Assembly of the State of Tennessee in Chapter 9 "Appropriation and Disbursement of Funds," under the general provisions, "Counties", has specified in Section 5-924, Tennessee Code Annotated, that federal funds are county funds. This proposition on its face is clearly erroneous. The semantics of the title and body of Section 5-924, Tennessee Code Annotated, "Appropriation of Certain Funds to Use of Various Departments and Agencies" is uncontradictable that the subject is the appropriation of funds and the establishing of county legislative bodies as the appropriative entity for the designated funds.

In fact, the Legislature of the State of Tennessee, obviously conscious of federal funding, and distinguishing between federal and state funding, amended Section 5-924 of the Tennessee Code Annotated in 1976 by inserting "*federal funds*" (emphasis supplied) to funds which

shall be appropriated by the County Legislative bodies, yet the Legislature did not see fit to amend the statute relied upon by the petitioners, Section 49-605, Tennessee Code Annotated, to include federal funds.

In the case under consideration, the Supreme Court of Tennessee, in commenting on the above, stated:

> "There is, however, another statute, not cited by the principal parties, but relied upon by the Surety on the Trustee's bond, which we consider to be highly significant. Sec. 5-924, T.C.A. reads as follows:
>
> "All funds from whatever source derived, including but not limited to taxes, county aid funds, *federal funds,* and fines, which are to be used in the operation and respective programs of the various departments, commissions, institutions, boards, offices, and agencies of county governments shall be appropriated to such use by the county legislative bodies. (Emphasis supplied).
>
> "It should be noted that this statute, as originally enacted in 1959 did not include federal funds. By Chapter 615 of the Public Acts of 1976 the original language was changed by adding the words 'federal funds'. No other change was made. Section 49-605, however, was not amended." *State of Tenn., ex rel., Conger, et al. v. Madison County, Tenn., et al., supra,* p. 637.

V.

CONCLUSION

The contentions of the petitioners pose no "federal question". By no stretch of the imagination, nor in the light of all of the authorities, does the case of the petitioners meet any of the requirements of 28 U.S.C.S. 1257(3) so as to confer jurisdiction upon this Court. It is therefore respectfully submitted that the Petition for Writ of Certiorari in all justice should be denied.

Respectfully submitted,

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VI.

CERTIFICATE OF SERVICE

We, Hewitt P. Tomlin, Jr., and Jack Manhein, Jr., do hereby certify that we have this day mailed, postage prepaid, three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of the State of Tennessee to Russell Rice, Esq., Third Floor, Fox Building, Jackson, Tennessee 38301, this the 19th day of September, 1979.

HEWITT P. TOMLIN, JR.
JACK MANHEIN, JR.

APPENDIX

APPENDIX A

IN THE CIRCUIT COURT FOR MADISON COUNTY, TENNESSEE

R.D. No. 77-164

THE STATE OF TENNESSEE, EX REL, ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,
PLAINTIFFS,

VS.

MADISON COUNTY, TENNESSEE, a political sub-division of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;
Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,
Resident of the State of California,
DEFENDANTS.

COMPLAINT

(Filed August 24, 1977)

The Relators respectfully would show unto the Court as follows:

1. That the City of Jackson, Tennessee is a municipal corporation lying within the boundary of Madison County, Tennessee; that the Relators are the duly elected Board of Commissioners of such City, and as such are the School Board of the City of Jackson School System, a special school district within Madison County, Tennessee within the meaning of Section 49-605, Tennessee Code Annotated.

2. That Madison County, Tennessee is a political subdivision of the State of Tennessee governed by a Quarterly County Court; that such Court has legislative power for the County, including the approving of budgets and the appropriation of funds to the various departments of the County, and specifically, to the School Department of Madison County, Tennessee; that said County operates a school system in the area of Madison County outside of the Corporate Limits of the City of Jackson, which system is administered by a School Board elected by the Madison County Quarterly Court; that said County School Department is financed by taxation levied throughout Madison County, Tennessee, by State Sales Tax income derived from retail sales within Madison County, Tennessee, by other State appropriations for educational purposes, and, beginning in 1977, at the end of the 1976-77 fiscal year, by use of General Revenue Sharing Funds derived from the Federal Government.

3. That the Defendant, Walter Baker Harris, as County Judge of Madison County, Tennessee, is the chief

administrative and fiscal officer of Madison County, Tennessee, and charged, among other things, with the management of fiscal affairs of said County and the issuance of County warrants for funds to various departments, including the County School Department.

4. That the Defendant, Leon Johnsey, is the duly elected County Trustee of Madison County, Tennessee, charged with the responsibility of maintaining, conserving and applying the funds of Madison County, Tennessee in accordance with law and more particularly in compliance with Section 49-605, Tennessee Code Annotated.

5. That under the provisions of Section 49-605, Tennessee Code Annotated, all school revenues for current operation and maintenance of Madison County schools, regardless of source, are required to be placed in one separate school fund, (except revenues derived from a transportation tax levy); that under said Section, the County Trustee of Madison County is required to apportion all such school revenues, except the transportation fund, between the County School System and the City of Jackson School System, a Special School District within the County, on the basis of the average daily attendance maintained by each, during the current school year. The pertinent parts of this Code Section are as follows:

> "49-605. Levying of school tax - Funds - Expenditure - Fiscal accounting. - A. For each school system there shall be levied for current operation and maintenance not more than one school tax for all such grades as may be included in the local school program. *Each* system *shall* place in *one* separate school fund *all school revenues* for current school operation purposes received from the state, county, and other political subdivisions, if any. However, any county which was a non-equalizing county in 1955-56 and which has with-

in its borders a city or special district operating a system of public schools and which county in the current school year operates a system of public school transportation, *may* levy a special tax to cover that portion of the total cost of such public school transportation system as is over and beyond the allowed cost of pupil transportation within the minimum foundation school program of such county as determined under the provisions of subsection B of § 49-602. The proceeds of such special transportation tax levy shall be set up in a special account hereinafter to be known as the 'Public School Pupil Transportation Fund' and shall be disbursed on order of the county board of education for public school transportation services only. *All school funds for current operation and maintenance purposes collected by any county,* except the funds raised by any local special pupil transportation tax levy as authorized in this subsection, *shall be apportioned by the county trustee among the county, city, and special school districts therein on the basis of the average daily attendance maintained by each, during the current school year.* For the purposes of making the apportionment of local school funds as set forth in this subsection, and in defining the average daily attendance for the current school year, the county superintendent of schools and the county trustee shall be guided by the following procedure:" (Underscoring supplied.)

6. Relators would show unto the Court that in the Spring of 1977, the Quarterly County Court appropriated from Federal Revenue sharing funds to the Madison County School Fund, for the purpose of meeting a 1976-77 budget deficit in operation and maintenance in such Department, the sum of $201,476.00; that on June 30, 1977

a warrant in the amount of $90,000.00 was drawn by the County Judge favor of the Madison County School Fund, and such sum was placed by the County Trustee in the "Public School-County" fund. On July 12, 1977, a warrant in the amount of $111,476.00 was likewise drawn by the County Judge, favor of the Madison County School Fund, and such sum likewise was deposited by the County Trustee in the "Public School-County" fund carried on the cash journal of Madison County, Tennessee. The said "Public School-County" fund is the only fund for current operation and maintenance of county schools carried by the Trustee for the Madison County School Department.

7. That the sum of $201,476.00 appropriated by Madison County to the Madison County School fund and deposited by the County Trustee into the single fund carried by such Trustee for such school department was not apportioned to the City of Jackson as required by Section 49-605, Tennessee Code Annotated, and the entire sum has been expended by the Madison County School Department.

8. That in July 1977, the Madison County Quarterly Court adopted its budget for the 1977-78 fiscal year, and in so doing, appropriated to the Madison County School Fund for current operation and maintenance the sum of $728,047.72 from County taxation, and the sum of $565,-862.51 from general revenue sharing monies received from the Federal Government; that such sum has not, at this time, been apportioned between Madison County Schools and the City of Jackson Schools, and the officials of Madison County, including the County Judge, the County Trustee, and members of the Quarterly County Court have publicly stated that the sum of $565,862.51, appropriated from Federal Revenue Sharing Funds, will not be apportioned as required by Section 49-605, Tennessee Code Annotated.

9. Relators aver that any action of the County Judge, County Trustee, and/or the Quarterly County Court undertaking to prevent apportionment with the City School Department of funds appropriated to the Madison County School Department for current operation and maintenance, whatever the source, is unlawful and beyond the power of the County Judge and/or the Quarterly County Court to require; that the County Trustee of Madison County, Tennessee is not subject to the control nor direction of the Quarterly County Court or the County Judge; that in failing to follow the direction and requirements of Section 49-605, Tennessee Code Annotated, by making an apportionment, the County Trustee has violated the law and committed a misfeasance in office; that for the sums appropriated for 1976-77 fiscal year to the Madison County School Department, without apportionment, and expended by the Madison County School Department, the County Trustee and Transamerica Insurance Company, Surety, are liable to the City of Jackson for the amount which the City of Jackson School Department would have received had a lawful apportionment been made, or a total of $97,836.75.

10. Relators further aver that should the County Trustee fail to apportion to the City of Jackson its part of the $565,862.51 in the 1977-78 school budget, even though such sum has not been expended at this time, he will likewise violate the law, commit a misfeasance in office, and for any sums expended hereafter unless and until such apportionment be made, the County Trustee and his Surety will be liable to the City of Jackson School Department.

11. Defendant, Transamerica Insurance Company, as Surety on the fidelity bond of Thomas Leon Johnsey, Sr., County Trustee, is likewise liable to the City of Jack-

son School Department to the same extent that the County Trustee is liable as per the terms of the bond executed by this Defendant. A copy of such bond is attached hereto and marked Exhibit "A" to this Complaint.

12. That in failing to apportion the County School Fund in accordance with the requirements of Section 49-605, Tennessee Code Annotated, the Defendants are discriminating against the taxpayers and school children residing in the City of Jackson, contrary to the General Education Act of the State of Tennessee; that the appropriating of Federal Revenue Sharing Funds to the County School Department and in the failing to apportion same was a deliberate pre-determined act by County officials, the purpose of which was to evade the apportionment requirements of Section 49-605, Tennessee Code Annotated.

13. That unless restrained by order of this Court, Relators believe and aver that the County Judge will continue to issue warrants and the County Trustee will expend to the Madison County School Department the sum in question which has been appropriated from Federal Revenue Sharing Funds under the 1977-78 budget, and Relators, therefore, aver that this is a proper case for the issuance by this Court of a temporary injunction commanding the County Judge and the County Trustee not to issue warrants and/or expend any of such $565,862.51 pending further order of this Court.

14. Relators aver that this is a proper case for the issuance by this Court of the Writ of Mandamus commanding Madison County, Tennessee and the Madison County Quarterly Court to levy such taxes on property outside the Corporate Limits of the City of Jackson as required, or otherwise provide such funds, for the purpose of providing funds to the County Trustee to pay the apportionment of $201,476.00 due the City of Jackson School

Department which was unlawfully withheld and is already spent.

15. Relators believe and aver that the County Trustee will not apportion the sum of $565,862.51 appropriated in the 1977-78 budget of the School Department from Federal Revenue Funds unless compelled to do so by this Court and that, therefore, this is a proper case for the issuance by this Court of its Writ of Mandamus directed to the County Trustee of Madison County, Tennessee, commanding said Trustee to apportion between the City and County all school funds in the 1977-78 appropriation, except transportation levy, including any sums appropriated from Federal Revenue Sharing Funds, appropriated to Madison County School Department for current operation and maintenance in accordance with law.

WHEREFORE, PLAINTIFFS PRAY:

1. The Declaratory Judgment of this Court that all funds, including funds derived from Federal Revenue Sharing Grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of county schools, shall be placed in one separate school fund.

2. The Declaratory Judgment of this Court that all monies lawfully appropriated to the County School Fund for current operation and maintenance shall be apportioned by the County Trustee between the County School System and the City of Jackson School System, including any funds placed therein from the Federal Revenue Sharing Grants.

3. That the City of Jackson have and recover of Madison County, Tennessee, of Thomas Leon Johnsey, Sr., County Trustee, and his Surety, Transamerica Insurance Company, a judgment in the amount of $97,836.75 in dam-

ages arising out of the failure of the County Trustee to apportion the special appropriation of $201,476.00 made by the Quarterly County Court to the County School Fund to cover a deficit in the current operation and maintenance fund for the 1976-77 school year; and that this Court issue its Writ of Mandamus compelling and requiring the Quarterly County Court of Madison County, Tennessee to levy such taxes as may be required upon all of the property in Madison County, Tennessee outside of the Corporate Limits of the City of Jackson to pay such judgment.

4. That this Court issue its Writ of Mandamus requiring County Trustee, Thomas Leon Johnsey, Sr., to apportion all funds lawfully appropriated by the Quarterly County Court for the current operation and maintenance of County Schools for the 1977-78 school year, including any sums appropriated from a grant to Madison County, Tennessee under the Federal Revenue Sharing Law.

5. That this Court issue a preliminary injunction enjoining and restraining Madison County, Tennessee, the Quarterly County Court of Madison County, Tennessee, County Trustee Thomas Leon Johnsey, Sr., and/or Walter Baker Harris, County Judge, from appropriating, disbursing, spending, encumbering, or in any other way seeking to make a disposition of all sums of Federal Revenue Sharing monies in the possession now or to become in the possession later of the Trustee until such time as the issues here enjoined have been settled and resolved by this Court.

6. That at the hearing of this cause the Court issue a permanent injunction commanding Madison County, Tennessee, its Quarterly County Court, its County Judge, and its County Trustee to cease and desist from any and all acts of discrimination against the school children and the citizens residing within the City of Jackson by failing

and refusing to apportion County School Funds in accordance with the provisions of Section 49-605, Tennessee Code Annotated.

That Plaintiffs have such other and further relief as they may be entitled. This is the first application for extraordinary process.

Sidney Spragins, Assistant City Attorney
Elks Building
Jackson, Tennessee 38301

/s/ Russell Rice
Russell Rice, City Attorney
Third Floor, Fox Building
Jackson, Tennessee 38301

APPENDIX B

IN THE CIRCUIT COURT FOR MADISON COUNTY TENNESSEE

R. D. NO. 77-164

THE STATE OF TENNESSEE, EX REL. ROBERT CONGER, BEN LANGFORD, and JOHN PARHAM, being the elected Board of Commissioners of the City of Jackson, and by virtue of such office, the School Board of the City of Jackson, Tennessee School System;
Residents of Madison County, Tennessee,
PLAINTIFFS,

VS.

MADISON COUNTY TENNESSEE, a political sub-division of the State of Tennessee;

AND

WALTER BAKER HARRIS, County Judge of Madison County, Tennessee;

AND

LEON JOHNSEY, Trustee of Madison County, Tennessee;
Residents of Madison County, Tennessee;

AND

TRANSAMERICA INSURANCE COMPANY,
Resident of the State of California,
DEFENDANTS.

JUDGMENT

This cause came on to be heard on the 7th day of December, 1977 before the Honorable Gene Walker, Circuit

Judge, upon the original Complaint, as amended, the answers of the Defendants, the testimony of witnesses in open Court, and argument of counsel, from all of which it appears unto the Court and the Court does find that in the latter part of the 1976-77 fiscal year, the Madison County Quarterly Court did appropriate the sum of $201,476.00, from funds received by Madison County under the Federal Revenue Sharing Statute of the Federal Government, into the Madison County School Fund for current operation and maintenance, and that such sum was knowingly not apportioned between the Madison County School System and the City of Jackson School System as required by Section 49-605 Tennessee Code Annotated; that the Madison County School System and the City of Jackson School System are the only two school systems being operated within Madison County, Tennessee; that the average daily attendance of the Madison County School System during the 1976-77 fiscal year was as follows: for the City of Jackson, 6,617 and for Madison County, 7,009, for a total school population average daily attendance of 13,626 in both systems; that broken down into percentages, the City of Jackson percentage for sharing under the provisions of Section 49-605 Tennessee Code Annotated is 48.561537% and the County's percentage share is 51.438427%; that the $201,476.00 appropriated to Madison County School System during the 1976-77 school year has been spent and is not available for apportionment; that a total appropriation of $391,683.82 would have been required for the County to receive an apportionment of $201,476.00 and for the City of Jackson to have received its proper proportion in percentage of $190,207.82; that by virtue of the failure to apportion as set forth above, the City of Jackson is entitled to a judgment in the sum of $190,207.82 against Madison County, Tennessee.

The Court further finds that the Madison County Quarterly Court has appropriated, from Federal Revenue Sharing Funds, $565,822.51 to the Madison County School fund for the 1977-78 year, such funds to be used for current operation and maintenance of the Madison County School System; that the $565,822.51 appropriated for the 1977-78 fiscal year made to the Madison County School System for current operation and maintenance has knowingly not been apportioned by the County Trustee as required by Section 49-605 Tennessee Code Annotated, and that the Defendants in this case openly state that they do not intend to make such apportionment as required by said code section; that the determination not to apportion in both instances was made by the Madison County Quarterly Court and such decision was communicated by the County Judge to the County Trustee.

The Court further finds that the relief sought by the Plaintiff should be granted.

IT IS, THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

1. It is the judgment of this Court, and it is hereby declared, that all funds, including funds derived from Federal Revenue Sharing grants, lawfully appropriated by the Madison County Quarterly Court for the current operation and maintenance of County Schools must be placed in one separate school fund and apportioned between the Madison County School System and the City of Jackson School System in accordance with the provisions of Section 49-605 Tennessee Code Annotated.

2. That the City of Jackson have and recover of Madison County, Tennessee a judgment in the amount of $190,207.82 in damages arising out of the failure to apportion the special appropriation of $201,476.00 made

by the Quarterly County Court to the County School Fund to cover a deficit in the current operation and maintenance fund for the 1976-77 school year, and the Madison County Quarterly Court is hereby ordered to levy in the next ensuing tax year upon all of the real property in Madison County, Tennessee such taxes as may be required to pay such judgment, or to otherwise provide for payment of same not later than the 31st day of December, 1978. The Plaintiff, or the City of Jackson, upon application will be granted the Writ of Mandamus and/or a Writ of Execution of the Court, if same be required.

3. That the Madison County Quarterly Court, the Madison County Trustee, and the Madison County Judge be directed and are hereby strictly and permanently enjoined, now and hereafter, to apportion with the City of Jackson School System all funds, including funds derived from Federal Revenue grants, appropriated to the Madison County School Fund for current operation and maintenance expenses as required by the provisions of Section 49-605 Tennessee Code Annotated. Upon application of the Plaintiff, or the City of Jackson, the writ of injunction and/or Writ of Mandamus of this Court may issue.

4. The temporary injunction heretofore issued in this cause is dissolved on the day this order becomes final and the bond principal and surety thereon discharged.

5. The Defendant Transamerica Insurance Company is dismissed in this cause and its cross-claim against Leon Johnsey and Madison County, Tennessee is likewise dismissed.

It appearing to the Court that the correct mathematical calculation of the apportionment due the City of Jackson School Department as a result of the failure to apportion the $201,476.00 appropriated by the Quarterly Court of

Madison County, Tennessee to the County School Fund for current operation and maintenance expense is $190,207.82, which is slightly different from the amount prayed for in the prayer of the Complaint, being $189,739.00. IT IS FURTHER ORDERED AND ADJUDGED that, upon application of Plaintiff:

6. The Complaint be amended on its face to conform to the proof by substituting $190,207.82 everywhere that the figure $189,739.00 appears.

The costs of this cause are adjudged against the Defendant Madison County, Tennessee, for all of which execution may issue.

ENTER:

/s/ Gene Walker
Circuit Judge

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

STATE OF TENNESSEE, ex rel
ROBERT CONGER, et al.,
Petitioners,

VS.

MADISON COUNTY, TENNESSEE, et al.,
Respondents.

IN THE COURT OF APPEALS OF
TENNESSEE, WESTERN SECTION
AT JACKSON

PETITION FOR CERTIORARI, ASSIGNMENT OF ERROR, BRIEF AND ARGUMENT ON BEHALF OF PETITIONERS

PREFACE

In this Brief the Petitioner is referred to throughout as "Jackson." References to the technical record are indicated by "R". References to the Bill of Exceptions are indicated by "T".

TO: THE HONORABLE JUDGES OF THE SUPREME COURT OF TENNESSEE:

Petitioners respectfully petition this Honorable Court for the issuance of its Writ of Certiorari to the Court of Appeals of Tennessee to the end that this cause may be brought into this Court for review, and in support of such petition, would show to the Court as follows:

I.

The Petitioners are much aggrieved by a Final Judgment entered in the above styled cause by the Court of Appeals on the 13th day of June, 1978, wherein the Court of Appeals reversed the Judgment of Honorable Gene Walker, Circuit Judge, and dismissed the action, dissolving all injunctions and other extraordinary writs.

II.

It is alleged and admitted by the Defendants that the Madison County Quarterly Court during the latter part of the 1976-1977 fiscal year made a supplemental appropriation to the County School System, for current operations and maintenance, the sum of $201,476.00; that the County Trustee did not apportion such appropriation between the County School System and the only Special School District within Madison County, which is the City of Jackson School System, all as required by Section 49-605 Tennessee Code Annotated; that such sum was promptly spent by the County School Department and is not now available for apportionment. It is further agreed that the sum was appropriated by the Quarterly County Court from revenue received by Madison County from a Federal Revenue Sharing grant.

It is further alleged and agreed by the Defendants that for the fiscal year 1977-1978 the Madison County Quarterly Court appropriated to the Madison County School System for current operations and maintenance a total sum of $1,293,910.23, of which sum $565,822.51 was appropriated from funds derived from a Federal Revenue Sharing grant; that that portion of the total appropriation derived from Federal Revenue Sharing funds was not apportioned by the County Trustee between the Madison County School System and the City of Jackson School

System, as required by Section 49-605 Tennessee Code Annotated. It is admitted by the Defendants that in each instance the action was deliberate and that the County Trustee does not intend to make an apportionment of the sums referred to.

The Trial Court awarded the Petitioner a Judgment against Madison County, Tennessee in the sum of $190,-207.82 for failure to apportion the supplemental appropriation in 1976-1977, granted Petitioner an injunction against Madison County, Tennessee, the County Judge of Madison County and the County Trustee of Madison County restraining and prohibiting violations of Section 49-605 Tennessee Code Annotated and requiring apportionment of all sums appropriated by Madison County to the County School System with the City of Jackson School System, including Federal Revenue Sharing funds. Since the Judgment was not rendered by the Trial Court against the County Trustee, the bonding company of the County Trustee was dismissed. The respondents appealed from the Judgment of the Trial Court and the Petitioners appealed the failure of the Trial Court to award the Judgment against the County Trustee and his bonding company, Transamerica Insurance Company, as well as against Madison County. Petitioner also appealed the dismissal of Transamerica Insurance Company.

The respondents took the position that Section 49-605 Tennessee Code Annotated did not apply to funds appropriated by the Madison County Quarterly Court to the County School System if such funds were received by Madison County under a Federal Revenue Sharing grant.

III.

The Court of Appeals, in its decision, agreed with the County that Section 49-605 Tennessee Code Annotated

did not apply to funds appropriated by the County from Federal Revenue Sharing grants and did so on the basis of the language of Section 49-605 Tennessee Code Annotated. In such Opinion the Court set forth the pertinent portions of Section 49-605 Tennessee Code Annotated, and underscored seven (7) words therein which the Court apparently relied upon in reaching its conclusions that the Section does not apply to funds appropriated by the Quarterly Court from a Federal Revenue Sharing grant. Other than such underscoring the Court offers no explanation or reasons for its conclusion. The reader is free to surmise at will as to the intent of the Court of Appeals. It is the position of the Petitioners that the Court of Appeals' interpretation of the language appearing in Section 49-605 Tennessee Code Annotated is erroneous.

IV.

An analysis of the decision of the Court of Appeals requires the reader to seek to determine the significance the Court of Appeals placed upon the underscored words, which, of course, is an uncertain approach at the best. The Petitioner, however, believes that the underscoring of the words, "state, county, and other political subdivisions" was intended to indicate the belief of the Court of Appeals that these words created a limitation upon the subject matter of the sentence, which is, "all school revenues", and further, the apparent belief of the Court of Appeals that, since Madison County, Tennessee appropriated the school revenue from funds derived by Madison County from a Federal Revenue Sharing grant, such appropriation did not constitute "received from the state, county, and other political subdivision, if any". If this assumption is correct, Petitioner submits that the Court of Appeals has simply overlooked the total meaning of the sentence. The significant words overlooked by the Court of Appeals

are contained in the phrase, "Each *system* shall place in one separate school fund all school revenues. . . ." *This sentence is referring to the source of money coming to the system* and it is admitted that the Madison County *School System* received its revenue *from Madison County.* This sentence is directing the school system what to do with revenues received from Madison County. "Hereinafter in this title . . . the term school system . . . shall mean . . . any county school system. . . ." Tennessee Code Annotated Sec. 49-102.

Webster's New World Dictionary devotes considerable attention to the word "all". It is defined as an adjective meaning "the whole quantity", "every one of", "the greatest possible", "any"; "any whatever". Further, it discusses the word "all" in its "combining form meaning", and says that it means "wholly, entirely, for every, as in all-purpose, and of every part, as in all-inclusive."

While it may seem elementary to have to revert to the dictionary for a definition of the word "all", it is necessary to do so in order to test the conclusion of the Court of Appeals. When the meaning of "*all* school revenues" is revealed, the only conclusion, therefore, that can be drawn from the Opinion of the Court of Appeals is that it is using the underscored terms in a restrictive sense. A reading of this Code Section in its entirety reveals it simply cannot be the intent of this Section. The true intent is that the school system will place all school revenues in one separate school fund and the additional language is not a limitation but an effort to expand the meaning of "all" to include from any source whatever. The extra language is redundant. It is probable that this language was intended to make it clear that the Legislature was not just talking about the one school tax referred to in the sentence just preceding the sentence in question.

The next sentence, which the Court of Appeals has singled out, is the one which reads,

> "all school funds for current operation and maintenance purposes *collected* by any county . . . be apportioned, etc."

While the Court does not say so in its decision, the only inference that Petitioners can draw from the underscoring of the word, "collected" is that it considers this to be a restrictive word to be applied against the phrase, "all school revenues." Once again, turning to Webster's New World Dictionary as to the word "collect", we find that it is defined as "to gather together; example, to call for and receive payment for"; "to gather, assemble, to accumulate, to collect payments." The only interpretation of this word which will support the Opinion of the Court of Appeals is that the Legislature intended only to apportion those items for which the County has its own collector. If this interpretation can be said to be right, then the holding of the Supreme Court in *Harriman v. Roane County, supra,* which deals in part with the second half sales tax, would have to be wrong, as the sales tax is not "collected" by Madison County in the sense that the Court of appeals seems to imply. The County *receives* the sales tax, which is clearly within Webster's definition of "collect", but it does not have its own collector.

V.

It is the belief of the Petitioner that the decision of the Court of Appeals is erroneous for the reasons above stated and that such decision, if allowed to stand, will deprive Special School Districts across the State of Tennessee of countless millions of dollars to which they are lawfully entitled under the provisions of Section 49-605 Tennessee Code Annotated; that it will grant to those

counties in which there is located a Special School District a windfall of the countless millions lost by the Special School Districts. The further effect of the Court of Appeals' decision will be to alter the intent and purpose of Section 49-605 Tennessee Code Annotated, which enactment had the purpose of compensating Special School Districts for taking over a part of the responsibility placed upon the County by Section 49-102 Tennessee Code Annotated to administer a school system in the County. It, further, will alter the provisions of Section 49-605 Tennessee Code Annotated and Section 49-206 Tennessee Code Annotated, which defines the duties of the County Trustee in connection with apportionment between County Systems and Special School Systems within the County. It may be worth noting that the duty of apportionment placed upon a County Trustee is of sufficient importance that the Legislature has declared a failure of the County Trustee to comply with Section 49-206 Tennessee Code Annotated would be a misdemeanor (Section 49-207 Tennessee Code Annotated).

In this case, for both fiscal years the Madison County Quarterly Court itself complied with the provisions of Section 49-605 Tennessee Code Annotated in that it appropriated funds to the County School System. This is the extent of the County Court's authority. The County Court has nothing at all to do with apportionment, this being a ministerial act demanded of the County Trustee as to which the County Trustee has no discretion whatever. It is admitted that County officials, including the County Judge and the Quarterly County Court, prevailed upon the County Trustee not to make the apportionment demanded by Section 49-605 Tennessee Code Annotated as to those funds appropriated to the County School System from Federal Revenue grants.

VI.

The above is more fully argued and set out in the Assignments of Error, Brief and Argument, which are attached hereto and made a part hereof. This is a case of extreme importance to the Special School Districts across the State of Tennessee.

WHEREFORE, PREMISES CONSIDERED, PETITIONERS PRAY that the Writ of Certiorari be issued by this Court to the Court of Appeals directing that the record in this cause be brought before it for review, to the end that (1) the Judgment of the Court of Appeals may be reversed; (2) the Judgment of the Trial Court reinstated; (3) the action of the Trial Court in dismissing Transamerica Insurance Company, the bonding company of the Trustee, be reversed; and (4) a judgment in the sum of $190,207.82 be entered in this Court against Leon Johnsey, Trustee of Madison County and his bonding company, Transamerica Insurance Company. Petitioners also PRAY for such further and general relief as they may be entitled to receive.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI.

Sidney W. Spragins
Rice & Rice
By /s/ Russell Rice
Attorneys for Petitioners
Third Floor Fox Building
Jackson, Tennessee 38301

STATE OF TENNESSEE
COUNTY OF MADISON

RUSSELL RICE, SR., being duly sworn, makes oath that he is one of the attorneys for the Petitioners and that the allegations of the foregoing Petition are true and correct, and that in his opinion the Petitioners are justly entitled to the relief sought.

This 15th day of June, 1978.

/s/ Russell Rice, Sr.
Russell Rice, Sr.

SWORN TO AND SUBSCRIBED before me, this 15th day of June, 1978.

/s/ (Illegible)
Notary Public

My Commission expires: Sept. 17, 1978.

NOTICE OF INTENTION TO APPLY FOR WRIT OF CERTIORARI

To the Honorable Hewitt Tomlin, Attorney for Madison County, Tennessee, Honorable Walter Baker Harris, County Judge, and Leon Johnsey, County Trustee, and to Honorable Jack Manhein, Jr., Attorney for Transamerica Insurance Company:

You and each of you are hereby notified that a Petition for a Writ of Certiorari in the above styled matter will be filed with the Clerk of the Supreme Court of the State of Tennessee on June 15, 1978.

This 7th day of June, 1978.

Rice & Rice

By /s/ Russell Rice

Third Floor, Fox Building,
Jackson, Tennessee 38301
Attorney for Petitioners

ASSIGNMENTS OF ERROR

The Court of Appeals erred in the following respects:

I.

The Court erred in holding that TCA Sec. 49-605 has no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended.

II.

The Court erred in holding "Madison County has placed in its Educational Budget all revenue sharing funds it received from the Federal Government. The only issue before the Court is whether Madison County must apportion that money with the City of Jackson on the basis of the average daily attendance of pupils in their respective school systems. Our answer is 'No'."

III.

The Court erred in reversing the Trial Court and in dismissing the action, dissolving injunctions and extraordinary writs issued by the Trial Court.

IV.

The Court erred in failing to sustain the action of the Trial Court.

V.

The Court erred in failing to sustain Petitioner's Assignment of Error No. 1, which assignment is as follows:

> "The Court erred in failing to award Jackson a judgment against Leon Johnsey, Trustee of Madison County, and his bonding company, Transamerica In-

surance Company, in the sum of $190,207.82, said Trustee being the County officer upon whom responsibility for apportioning school fund appropriations is placed by Section 49-605 Tennessee Code Annotated."

VI.

The Court erred in failing to sustain Petitioner's Assignment of Error No. II, which assignment is as follows:

"The Court erred in dismissing the Defendant Transamerica Insurance Company."

VII.

The Court erred in that its decision gives to funds derived from Federal Revenue Sharing grants a special protection not applicable to other funds appropriated by Madison County, Tennessee, which special classification is contrary to the specific provisions of Title 31, Sec. 1243(4) U.S.C.A. (Federal Revenue Sharing Law) which specifically provides that local governments:

(4)1. . . . it will provide for the expenditure of amounts received under sub-chapter I of this chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenue;"

STATEMENT OF THE CASE

This is an action brought by the School Board of the City of Jackson as relators against Madison County, Tennessee, County Judge Walter Baker Harris and Honorable Leon Johnsey, County Trustee, and his bonding company, Transamerica Insurance Company. (R. pg. 1-9) The Plaintiff seeks a money judgment against the Defendants for failure to apportion a special appropriation made by the Madison County Quarterly Court to the County School System, for operational and maintenance purposes, in the latter part of the fiscal year 1976-77; seeks a writ of mandamus to compel Madison County to pay such judgment by levying whatever tax might be required; seeks an injunction against the Defendants prohibiting them from spending or using in any way funds appropriated by the Madison County Quarterly Court to the County School System for operational and maintenance purposes, for the fiscal year 1977-78 unless such money be apportioned with the Jackson City Schools, as required by Section 49-605 Tennessee Code Annotated, (T. pg. 1-8); and seeks a writ of mandamus to compel the County Trustee to perform the ministerial act of apportionment as commanded by Section 49-605 Tennessee Code Annotated. A preliminary injunction was issued by the Madison County Circuit Court restraining Defendants from expending any appropriation made to the County School Fund unless and until same was apportioned with the Jackson School System. (P. p. 18)

The Defendants admit practically everything alleged and their defense is solely that Federal Revenue Sharing grants received by the County, and subsequently appropriated to the Madison County School System is not required to be apportioned by Section 49-605 Tennessee Code Annotated. (R. pg. 20-23) The Trial Court in its Judgment (R. pg. 54-57) found as a fact that in the latter part

of the 1976-77 fiscal year the Madison County Quarterly Court appropriated the sum of $201,476 to the Madison County School System, which funds were appropriated from a Federal Revenue Sharing grant, to be used for current operation and maintenance; that such sum was knowingly not apportioned by the County Trustee between the Madison County School System and the City of Jackson School System as required by Section 49-605 Tennessee Code Annotated; that the a/d/a between the Madison County School System and the City of Jackson School System is 51.438427% and 48.561537%, respectively; that a proper apportionment to the City based on an apportionment to the County of $201,476 would have been $190,207.82 by virtue of which the Court did then grant a Judgment to the City of Jackson School Department against Madison County, Tennessee in the sum of $190,207.82.

The Court further found as a fact that the Madison County Quarterly Court appropriated from Federal Revenue Funds to the Madison County School System for the 1977-78 year the sum of $565,822.51, which funds were to used for current operation and maintenance; that the County Trustee did not apportion such sum with the City of Jackson School System and indicated that he did not intend to apportion such sum with the City of Jackson. Whereupon, the Court did enter its finding that all funds appropriated by Madison County, for current operation and maintenance, to the County School System, including Federal Revenue Sharing Funds, must be apportioned by the County Trustee between the Madison County School System and the City of Jackson School System in accordance with Section 49-605 Tennessee Code Annotated. The Court further granted the Plaintiff its Writ of Mandamus to require Madison County to pay the money Judgment heretofore granted; and further granted to Plaintiff a Writ of Mandamus to compel the Madison County Trustee Leon

Johnsey to perform the ministerial act of apportionment of the sum of $565,822.51 in his hands as part of the 1977-78 appropriation to County Schools. The Court further enjoined the Madison County Quarterly Court, the Madison County Trustee and the Madison County Judge to apportion now and hereafter with the City of Jackson School System all funds, including funds derived from Federal Revenue grants appropriated to the Madison County School System for current operation and maintenance expenses, as required by Section 49-605 Tennessee Code Annotated.

The Court, thereupon, dismissed the Defendant Transamerica Insurance Company.

The Defendants appealed and the Plaintiffs, thereupon, appealed. (R. pg. 62)

This case was argued before the Court of Appeals, West Tennessee Section, which Court three (3) hours later issued its Opinion to the effect that Madison County was under no obligation to apportion with the City of Jackson funds derived from Federal Revenue Sharing funds, and, further, that Tennessee Code Annotated 49-605 had no application to funds received by Madison County under the State and Local Fiscal Assistance Act of 1972, as amended. The Court, thereupon, reversed the Judgment of the Trial Court and dismissed the lawsuit.

STATEMENT OF FACT

Stipulation between the parties. (T. pg. 7)

"The first stipulation by the parties is that in meeting the 1976-77 budget, Madison County appropriated $201,476.00 of revenue sharing funds to the Madison County 'General Purpose School Fund' for maintenance and operating purposes. They appropriated this $201,476.00 which was received by the County after

January 1, 1977. That appropriation was to the Madison County 'General Purpose School Fund' for maintenance and operating purposes, and that such appropriation was not apportioned with the City of Jackson.'

The second stipulation is that this document, which was marked as Exhibit 1 at the hearing on preliminary injunction, is a true copy of what it purports to be, and that is: 'The Budget', 'The Appropriation Resolution', and 'The Tax Levy Resolution' of Madison County for the fiscal year July 1, 1977, to June 30, 1978.

We submit that this copy of the budget ought to be marked as Trial Exhibit #2 and will offer it at this time.

THE COURT: All right; let it be so marked.

(Accordingly, said booklet entitled, 'The Budget, The Appropriation Resolution, The Tax Levy Resolution of Madison County, Tennessee, was filed and marked as Plaintiff's Exhibit #2 and will be found attached hereto.)

MR. SPRAGINS: (Reading) 'The third stipulation is that Madison County does not intend to apportion with the City of Jackson, $565,862.51 of expected revenue sharing funds which have been apportioned by the County to the Madison County 'General Purpose School Fund' for maintenance and operating purposes.'

And the fourth stipulation is that the revenue sharing funds that the County expects to receive, and which it has appropriated and does not intend to apportion, will be received by the County in increments in early October, 1977, early January, 1978, and early April, 1978, and early July, 1978."

County School Superintendent James Walker testified that in 1976-77 average daily attendance in the City schools was 6,617 and the average daily attendance in the Madison County Schools was 7,009, which a simple mathematical computation will indicate is a percentage of 48.561537% for the City and 51.438427% for the County; that on July 7, 1977 the County Trustee, Leon Johnsey, was advised by letter from Superintendent Walker to make apportionment, using these figures (Ex. #3, T. pg. 23); that Madison County Quarterly Court made a supplemental appropriation to the Madison County School System in June, 1977 in the amount of $201,476.00, and that the money has been spent. (T. pg. 22, Q. 11, 12, 13)

Mr. Thomas David McAnulty, an employee of the University of Tennessee County Technical Systems Service for about three (3) years, testified that the action of the County in appropriating Federal Revenue Sharing Funds to the County School Fund, without apportionment, originated with his Department (T. pg. 142, Q. 1, 2) and testified at length on why he believes the provisions of the General Education Act of Tennessee should be changed in line with his philosophy. (T. pg. 74-151)

During the last part of the fiscal year 1976-77 the Madison County Quarterly Court made a supplemental appropriation of $201,476.00 to the Madison County School System to cover an operational deficit, such sum being appropriated from a grant received under the Federal Revenue Sharing Law. (T. pg. 3, Stip. 1; T. pg. 5) This supplemental appropriation was not apportioned with the Jackson School System, as required by Section 49-605 Tennessee Code Annotated. (T. pg. 5) The money was immediately spent. (T. pg. 22, Q. 11, 12, 13; T. pg. 23, Ex. #3) The explanation of Madison County for the failure to apportion with Jackson School System on an average

daily attendance basis was that the money was a Federal Revenue Sharing grant; that Jackson had also received a Federal Sharing grant; that, therefore, the money had already been apportioned and Section 49-605 Tennessee Code Annotated did not apply. (R. pg. 3, para. VIII; R. pg. 50; T. pg. 74-141) The money having been spent without apportionment, there is nothing now to apportion. The correct a/d/a division between Madison County and and Jackson School Systems was shown to be 48.561537% to Jackson and 51.438427% to the County. (T. pg. 20, Q. 3) In order to provide the County with a properly apportioned sum of $201,476.00, an appropriation of $391,-683.82 would have been necessary and Jackson's share thereof by proper apportionment would be $190,207.82.

In adopting the 1977-78 school budget, the Madison County Quarterly Court appropriated $565,822.51 from a Federal Revenue Sharing grant to the Madison County School System and advised that such sum had not been and would not be apportioned with Jackson School System on an average daily attendance basis, as required by Section 49-605 Tennessee Code Annotated, as said money was derived from Federal Revenue grants. (T. pg. 4, Stip. 3; T. pg. 5)

Jackson obtained an injunction against the Madison County Quarterly Court, the Madison County Trustee, and the Madison County Judge restraining them from any expenditure of the $565,822.51 without first apportioning same with Jackson's School System. This injunction was dissolved by the Court of Appeals but since this Petition for Certiorari has been filed presumably remains in effect and, therefore, this sum is available for apportioning in the event this Court upholds the Madison County Circuit Court. (R. pg. 57, para. 4)

PROPOSITIONS OF LAW

I.

Where the County Trustee fails to apportion between a County School System and a Special School District within the county, as required by Section 49-605 Tennessee Code Annotated, funds appropriated by the County Court to the County School Syster for current operation and maintenance, the County Trustee and his bonding company are liable in damages to the Special School District for the failure to so apportion.

II.

Where a Quarterly County Court appropriates to the County School System, for current operation and maintenance, funds derived from a Federal Revenue Sharing grant, such funds are subject to the apportionment provision of Section 49-605 Tennessee Code Annotated.

III.

The apportionment demanded of the County Trustee by Section 49-605 Tennessee Code Annotated is a ministerial duty as to which the County Trustee has no discretion whatever.

IV.

The apportionment demanded of the County Trustee by Section 49-605 Tennessee Code Annotated is a ministerial duty of the County Trustee, not subject to the control or discretion of the County Judge or of the County Court of such county.

ARGUMENT

In Petitioners' opinion this is a very uncomplicated legal question. The pertinent facts have been stipulated, or established by uncontradicted proof, that in the latter part of the 1976-77 fiscal year, in order to meet a deficit in the Madison County School Department, the Madison County Quarterly Court appropriated from Federal Revenue Sharing funds to the Madison County School System for current operation and maintenance, the sum of $201,476.00; that the County Trustee did not apportion same with the Jackson School System, a special school district within the county, but, instead, the entire $201,476.00 was promptly spent by the Madison County School Department; that the appropriate average daily attendance division between the Madison County School System and the Jackson School System is 51.438427% for the county and 48.561537% for Jackson; that a simple mathematical computation reveals that the required appropriation to have rendered to the county an apportionment of $201,476.00 would have been $391,683.82, of which the proper apportionment to the Jackson School System would have been $190,207.82; that of the appropriated $201,476.00, all has been expended by the county, and there is nothing to apportion remaining in the hands of the County Trustee.

That in making up the budget for the 1977-78 school year, the Madison County Quarterly Court appropriated from Federal Revenue Sharing funds to the Madison County School System for current operation and maintenance the sum of $565,822.51; the County Trustee stated at the time that said fund had not been apportioned with the Jackson School System as required by Section 49-605 Tennessee Code Annotated and that it was the intention of the county then, and still is, not to make such apportionment.

Based on the above facts, the question, very simply, is - Does Section 49-605 Tennessee Code Annotated require that all funds appropriated by the County Court to the County School System for current operation and maintenance, including funds derived by the County from Federal Revenue Sharing Funds granted to the county, be apportioned on average daily attendance basis between the County School System and the separate school district within the county, in this case, being the Jackson City School System only?

The Court of Appeals, in its decision, agreed with the County that Section 49-605 Tennessee Code Annotated did not apply to funds appropriated by the County from Federal Revenue Sharing grants and did so on the basis of the language of Section 49-605 Tennessee Code Annotated. In such Opinion the Court set forth the pertinent portions of Section 49-605 Tennessee Code Annotated, and underscored seven (7) words therein which the Court apparently relied upon in reaching its conclusions that the Section does not apply to funds appropriated by the Quarterly Court from a Federal Revenue Sharing grant. Other than such underscoring the Court offers no explanation or reasons for its conclusion. The reader is free to surmise at will as to the intent of the Court of Appeals. It is the position of the Petitioners that the Court of Appeals' interpretation of the language appearing in Section 49-605 Tennessee Code Annotated is erroneous.

An analysis of the decision of the Court of Appeals requires the reader to seek to determine the significance the Court of Appeals placed upon the underscored words, which, of course, is an uncertain approach at the best. The Petitioner, however, believes that the underscoring of the words, "state, county, and other political subdivisions" was intended to indicate the belief of the Court

of Appeals that these words created a limitation upon the subject matter of the sentence, which is, "all school revenues", and further, the apparent belief of the Court of Appeals that, since Madison County, Tennessee appropriated the school revenue from funds derived by Madison County from a Federal Revenue Sharing grant, such appropriation did not constitute "received from the state, county, and other political subdivision, if any". If this assumpation is correct, Petitioner submits that the Court of Appeals has simply overlooked the total meaning of the sentence. The significant words overlooked by the Court of Appeals are contained in the phrase, "Each *system* shall place in one separate school fund all school revenues. . . ." *This sentence is referring to the source of money coming to the system* and it is admitted that the Madison County *School System* received its revenue *from Madison County.* This sentence has no reference at all to the source from which Madison County obtained the funds and is directing the school system as to what it should do with revenues received from Madison County. See second paragraph in Sec. 49-102 T.C.A.

Webster's New World Dictionary devotes considerable attention to the word "all". It is defined as an adjective meaning "the whole quantity", "every one of", "the greatest possible", "any"; "any whatever". Further, it discusses the word "all" in its "combining form meaning", and says that it means "wholly, entirely, for every, as in all-purpose, and of every part, as in all-inclusive."

While it may seem elementary to have to revert to the dictionary for a definition of the word "all", it is necessary to do so in order to test the conclusion of the Court of Appeals. When the meaning of "*all* school revenues" is revealed, the only conclusion, therefore, that can be drawn from the Opinion of the Court of Appeals is

that it is using the underscored terms in a restrictive sense. A reading of this Code Section in its entirety reveals it simply cannot be the intent of this Section. The true intent is that the school system will place all school revenues in one separate school fund and the additional language is not a limitation but an effort to expand the meaning of "all" to include from any source whatever. The extra language is redundant. It is probable that this language was intended to make it clear that the Legislature was not just talking about the one school tax referred to in the sentence just preceding the sentence in question.

The next sentence, which the Court of Appeals has singled out, is the one which reads,

> "all school funds for current operation and maintenance purposes *collected* by any county . . . be apportioned, etc."

While the Court does not say so in its decision, the only inference that Petitioners can draw from the underscoring of the word, "collected" is that it considers this to be a restrictive word to be applied against the phrase, "all school revenues." Once again, turning to Webster's New World Dictionary as to the word "collect", we find that it is defined as "to gather together; example, to call for and receive payment for"; "to gather, assemble, to accumulate, to collect payments." The only interpretation of this word which will support the Opinion of the Court of Appeals is that the Legislature intended only to apportion those items for which the County has its own collector. If this interpretation can be said to be right, then the holding of the Supreme Court in *Harriman v. Roane County, supra,* which deals in part with the second half sales tax, would have to be wrong, as the sales tax is not "collected" by Madison County in the sense that the

Court of Appeals seems to imply. The County *receives* the sales tax, which is clearly within Webster's definition of "collect", but it does not have its own collector.

It is the belief of the Petitioner that the decision of the Court of Appeals is erroneous for the reasons above stated and that such decision, if allowed to stand, will deprive Special School Districts across the State of Tennessee of countless millions of dollars to which they are lawfully entitled under the provisions of Section 49-605 Tennessee Code Annotated; that it will grant to those counties in which there is located a Special School District a windfall of the countless millions lost by the Special School Districts. The further effect of the Court of Appeals' decision will be to alter the intent and purpose of Section 49-605 Tennessee Code Annotated, which enactment had the purpose of compensating Special School Districts for taking over a part of the responsibility placed upon the County by Section 49-102 Tennessee Code Annotated to administer a school system in the County. It, further, will alter the provisions of Section 49-605 Tennessee Code Annotated and Section 49-206 Tennessee Code Annotated, which defines the duties of the County Trustee in connection with apportionment between County Systems and Special School Systems within the County. It may be worth noting that the duty of apportionment placed upon a County Trustee is of sufficient importance that the Legislature has declared a failure of the County Trustee to comply with Section 49-206 Tennessee Code Annotated would be a misdemeanor (Section 49-207 Tennessee Code Annotated).

In this case, for both fiscal years the Madison County Quarterly Court itself complied with the provisions of Section 49-605 Tennessee Code Annotated in that it appropriated funds to the County School System. This is the

extent of the County Court's authority. The County Court has nothing at all to do with apportionment, this being a ministerial act demanded of the County Trustee as to which the County Trustee has no discretion whatever. It is admitted that County officials, including the County Judge and the Quarterly County Court, prevailed upon the County Trustee not to make the apportionment demanded by Section 49-605 Tennessee Code Annotated as to those funds appropriated to the County School System from Federal Revenue grants.

In support of its position that such monies must be apportioned as required by Section 49-605 Tennessee Code Annotated, Jackson takes its stand squarely upon the terms of such section and the decision of this Court in the case of *City of Harriman, et al. v. Roane County, Tennessee, et al.*, 553 SW(2d) 904. It is the position of Jackson and of the Trial Court that there is no difference whatever between funds derived by the county from the second one-half of the Tennessee sales tax, as in the *Harriman case*, and funds derived by the county from a Federal Revenue Sharing grant as in this case.

Section 67-3052 (2) (a) Tennessee Code Annotated authorizes a county to allocate the remainder of county sales tax receipts (the second one-half) to "such fund or funds of the county" as it shall direct. In the *Harriman case*, the Quarterly Court allocated the remaining portion (second one-half) of the county's share of retail sales tax proceeds to the school fund, to be used in meeting the annual budget of the county schools.

In this case, the county government is authorized by Title 31, Section 1243 (4) United States Code Annotated (Federal Revenue Sharing Law) to use Federal Revenue Sharing funds as follows:

> "(4)1 . . . It will provide for the expenditure of amounts received under Sub-Chapter I of this Chapter only in accordance with the laws and procedures applicable to the expenditure of its own revenues;"

Pursuant to this grant of authority, the Quarterly Court appropriated Federal Revenue Sharing Funds to its school system, first in 1976-77 to meet a deficit in the current operating and maintenance budget of the school system. The money was not apportioned but was spent by the County School Department. Secondly, in the 1977-78 school budget, the Quarterly Court appropriated Federal Revenue Sharing funds to the County School System for current operating and maintenance purposes. The County Trustee did not apportion same with the Jackson School System and expressly stated that he did not intend to do so. The Trial Court enjoined the expenditure of such school fund until apportioned.

Jackson believes the holdings in the *Harriman case* apply here and specifically the following:

> "While the Quarterly County Court is certainly not obligated to allocate these receipts to a current school budget, when it does so, we are of the opinion that special school districts within the county are entitled to a proportionate part under Tennessee Code Annotated, Section 49-605."

and further:

> "Where, however, the county does not make such a special purpose levy, but lawfully appropriates funds to current school operations, as had been done here with the portion of sales taxes at issue, then those funds become subject to the apportionment provisions of the General School Statutes."

Jackson simply does not find a point of debate on the above position. The second half sales tax money is available to the county for any purpose, and so is Federal Revenue Sharing money. The County Court did not have to appropriate second half sales tax money to the school fund for operating purposes, but elected to do so. In this case the County Court did not have to appropriate Federal Revenue Sharing money to the County School System for operating purposes, but elected to do so. Therefore, by its own action as to both the second half sales tax money and the Federal Revenue Sharing money, it put these funds within the meaning and scope of Section 49-605 Tennessee Code Annotated. We believe that the law as interpreted in the *Harriman case* and in *Board of Education of Memphis, etc. v. Shelby County,* 207 Tenn. 307, 339 S.W.(2) 569 is precisely applicable to the current dispute between Jackson and Madison County, Tennessee.

Jackson believes further that the direct point of responsibility for making lawful apportionment is placed upon the County Trustee, Leon Johnsey, by Section 49-605 Tennessee Code Annotated. While it is understandable that a County Trustee may feel compelled to go along with the County Court, a County Trustee in no way is subservient to such Court. The office of County Trustee is established by Article VII, Section 1 of the Constitution of Tennessee, and is an entirely independent office with independent responsibilities. The money judgment should have been awarded against the County Trustee and his bonding company, Transamerica Insurance Company, as well as against the County itself. The Defendant, Transamerica Insurance Company, therefore, should not have been dismissed by the Trial Court. The payment of moneys to persons authorized by law to receive them is specifically a bonded obligation under the terms of the

Trustee's bond with Transamerica Insurance Company. Exhibit "A" to Complaint (R-10).

RELIEF SOUGHT

The relief sought is as follows:

1. Petitioners' Assignments of Error Nos. I through VII sustained.

2. The Judgment of the Court of Appeals reversed.

3. The Judgment of the Trial Court reinstated, as modified by the granting of Petitioners' Assignment of Error No. V and No. VI.

4. A Judgment be entered in this Court in favor of the Petitioners and against Leon Johnsey, County Trustee, and his bonding company, Transamerica Insurance Company.

5. That the injunctions heretofore granted by the Trial Court commanding Madison County, Tennessee, the Madison County Quarterly Court and the Madison County Trustee to apportion with The City of Jackson School System all revenue, including Federal Revenue Sharing Funds, appropriated by the Madison County Quarterly Court to the Madison County School System for current operation and maintenance be made permanent by order of this Court, or, if necessary, a new injunction to this effect issued by this Court.

6. That the Writ of Mandamus issue by order of this Court Commanding the County Trustee Leon Johnsey to apportion with The City of Jackson School System the $565,822.51 appropriated from Federal Revenue Sharing Funds to the Madison County School System for the 1977-78 school year.

7. That this cause be referred back to the Circuit Court of Madison County for enforcement as necessary.

Respectfully submitted,

Sidney W. Spragins
Rice & Rice

By /s/ Russell Rice
Attorneys for Petitioners
Third Floor Fox Building
Jackson, Tennessee 38301

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petition, Assignment and Brief have this day been mailed by regular United States mail to Honorable Hewitt Tomlin, Attorney for Madison County, Tennessee, County Judge Walter Baker Harris and County Trustee Leon Johnsey, 106 South Liberty Street, Jackson, Tennessee 38301 and to Honorable Jack Manhein, Jr., Attorney for Transamerica Insurance Company, First National Bank Building, Jackson, Tennessee 38301.

This 15th day of June, 1978.

/s/ Russell Rice Sr.
Russell Rice, Sr.